
3700 Long-Term Care Ombudsman Program

3701 Overview

The Aging and Adult Administration shall develop, monitor, and enforce policies and procedures governing the Long-Term Care Ombudsman Program.

This chapter provides an outline of the Aging and Adult Administration operational principles and procedures for the Long-Term Care Ombudsman Program. **This policy chapter is subject to change as additional information and/or regulations are received from the U.S. Department of Health and Human Services, Administration on Aging.**

Reference: Older Americans Act of 1965, as amended in 2000, P.L. 106-501, §711-713; §307(9); A.R.S. 46-452.01; and A.R.S. 46-452.02.

3702 Operational Principles

3702.1 The Long-Term Care Ombudsman Program exists to protect the human and civil rights of a long-term care resident and to promote his/her autonomy through individual and collective advocacy efforts to enhance his/her quality of life in long-term care settings.

3702.2 The Long-Term Care Ombudsman Program is a resident centered advocacy program. The Long-Term Care Ombudsman will make every reasonable effort to assist, represent, and intervene on behalf of the resident.

3702.3 Long-Term Care Ombudsman Program services may be provided by contract with a regional public agency or a nonprofit organization.

3703 Operational Procedures for Ombudsman Services

3703.1 The Long-Term Care Ombudsman Program offers the following services:

- A) Complaint investigation and resolution
- B) Information and referral
- C) Community education
- D) In-Service education to facility staff
- E) Routine visits
- F) Issues advocacy
- G) Assistance to resident and family councils

3703.2 The Long-Term Care Ombudsman Program has developed the following inter-agency partnerships and continues to network with related programs to provide more immediate resolution to issues and expand resources:

- A) Arizona Department of Health Services.

B) Arizona Adult Protective Services.

3704 Operational Procedures for Regional Ombudsman Program Coordinator Roles and Responsibilities

3704.1 The Regional Ombudsman Program Coordinator will be limited in geographic scope to the area specified in the approved plan for the contracted service provider.

3704.2 In administering the Regional Long-Term Care Ombudsman Program, the Regional Ombudsman Program Coordinator(s) is responsible for the following activities:

- A) Recruiting, screening, selecting, training, managing, and providing technical support to staff and/or volunteers.
- B) Ensuring that all certified ombudsman follow policy, rules, and laws of the program.
- C) Ensuring that staff and volunteers remain eligible for re-certification.
- D) Representing the interests of residents before government agencies.
- E) Seeking legal, administrative, and other remedies on behalf of residents.
- F) Analyzing, commenting on, and monitoring the development of laws, regulations, policy, and actions pertaining to long-term care residents.
- G) Supporting the development of resident and family councils.
- H) Providing information, consultation, and education to the residents, families, long-term care facility staff, and to the community.
- I) Making referrals to other governmental and/or community agencies as appropriate
- J) Reporting program issues directly to the Office of the State Long-Term Care Ombudsman.
- K) Reviewing monthly reports and responding in a timely fashion to requests for data and other information as requested by the Office of the State Long-Term Care Ombudsman.
- L) Participating in scheduled conference calls and quarterly meetings with the Office of the State Long-Term Care Ombudsman.

3704.3 The Regional Ombudsman Program Coordinator may delegate the following responsibilities to certified staff and/or volunteers. Some of the following responsibilities may be delegated to other appropriate staff, when certified staff are not available with approval from the Office of the State Long-Term Care Ombudsman.

- A) Receiving, investigating, and resolving complaints.
- B) Representing the interests of residents before government agencies.

- C) Seeking legal, administrative, and other remedies on behalf of residents.
- D) Analyzing, commenting on, and monitoring the development of laws, regulations, policy, and actions pertaining to long-term care residents.
- E) Supporting the development of resident and family councils.
- F) Providing information, consultation, and education to the residents, families, long-term care facility staff, and to the community.
- G) Making referrals to other governmental and/or community agencies as appropriate.

3705

Operational Procedures for Screening for Conflict of Interest

- 3705.1 An individual who serves as a representative, or seeks to serve as a representative of the Office of the State Long-Term Care Ombudsman shall sign a Conflict of Interest Screen form (Exhibit 3000J). A copy of the form will be kept on file at the Office of the State Long-Term Care Ombudsman. An individual who serves as a representative of the Office of the State Long-Term Care Ombudsman shall review and sign a new Conflict of Interest Screen form at least every three years or if a change in status occurs.
- 3705.2 Conflict of interest occurs when an individual or a member of the individual's immediate family:
- A) Has direct involvement in licensing and/or certifying long-term care facilities.
 - B) Is a provider of long-term care services.
 - C) Has ownership or investment interest in a long-term care facility.
 - D) Has ownership or investment interest in a long-term care service.
 - E) Is employed by and/or manages a long-term care facility.
 - F) Receives or has the right to receive, either directly or indirectly, remuneration with an owner or operator of a long-term care facility.
- 3705.3 Regional Program Coordinators will report any identified conflict of interest to the Office of the State Long-Term Care Ombudsman.
- 3705.4 The Office of the State Long-Term Care Ombudsman will review the conflict of interest to determine if a waiver can be given.
- A) Waivers will be determined on a case-by-case basis.
 - B) Written responses will be provided to the Regional Ombudsman Program Coordinator within 30 days of receipt of the request.

3706

Operational Procedures for the Maintenance of Ombudsman Information

- 3706.1 The Office of the State Long-Term Care Ombudsman and an individual designated to act on behalf of the Office of the State Long-Term Care

Ombudsman shall not disclose any information with respect to whom the program maintains files:

- A) Information pertaining to the resident, complainant, and ombudsman intervention.
- B) Information pertaining to deposition of staff and volunteers by the Ombudsman.

3706.2 Persons requesting information are to be informed that the name of a resident or a complainant with whom the program has had intervention is confidential information and can be revealed only under the following circumstances:

- A) The complainant, resident, and/or legal representative gives consent to the disclosure in writing; or
- B) The complainant, resident, and/or legal representative gives oral consent and the consent is documented contemporaneously in writing by the Long-Term Care Ombudsman; or
- C) The disclosure is required by court order.

3706.3 Residents, complainants, and/or legal representatives will be asked to complete the Authorization for Release of Confidential Information Form prior to the Ombudsman disclosing identity. (Exhibit 3000J)

3706.4 Ombudsmen will document contemporaneously the resident's, complainant's, and/or legal representative's oral consent on the Case Notes Form (Exhibit 3000G)

3706.5 Subpoenas received by the Regional Ombudsman representative shall be sent to the Office of the State Long-Term Care Ombudsman within **two working days** of receipt by the Regional Ombudsman Program Coordinator.

- A) Regional Ombudsman representatives shall not discuss with the requesting attorney, his/her staff, or any other inquirer, any information requested in the subpoena or any information related to the case, including extent of Long-Term Care Ombudsman involvement in the case.
- B) The Office of the State Long-Term Care Ombudsman will issue a response to the requesting attorney based on the discretionary authority of the office. A copy of the response letter will be forwarded to the Regional Ombudsman Program Coordinator, as well as the representative served the subpoena.

3706.7 Court orders received by Regional Ombudsmen representatives shall be sent to the Office of the State Long-Term Care Ombudsman within two working days of receipt. The Regional Ombudsman Program Coordinator shall follow the instructions as issued by the Office of the State Long-Term Care Ombudsman regarding the response to the court order.

3707 Operational Procedures for Ombudsman Legal Representation and Liability

3707.1 The official duties as specified in the Arizona Revised Statute and the Older Americans Act of 1965, **when performed in good faith** are considered State conduct or action. Official duties are as defined in the Older Americans Act of

1965, as amended in 2000, §712 (a)(5)(A) and (B). Official duties are also those as defined in ARS § 46-452.02.B.

3707.2 Certified representatives of the Office of the State Long-Term Care Ombudsman performing state conduct or action are provided State legal representation.

3707.3 Certified representatives performing action outside of the official duties specified will be interpreted as performing unauthorized action.

3707.4 Certified representatives performing unauthorized action are not provided State legal representation and may be open to personal liability.

3707.5 Certified representatives performing unauthorized action may be subject to De-certification as described in section 3711.

3708 Operational Procedures for Ombudsman Certification

3708.1 The Regional Ombudsman Program Coordinator will conduct a screening interview of an individual wishing to be considered for certification as a representative of the Office of the State Long-Term Care Ombudsman. During this screening interview, the individual is informed of the Ombudsman Program role and its requirements. The individual's capacity to serve as an ombudsman representative must be determined. The Coordinator will request from the applicant three personal references.

3708.2 Certification will occur when the applicant has met the following requirements:

- A) Complete required administrative paperwork as evidenced by completion of the Volunteer Registration (Exhibit 3000H) and Confidential Reference (Exhibit 3000I).
- B) Is free of conflict of interest as demonstrated in signing the Conflict of Interest Screen form (Exhibit 3000J).
- C) Has demonstrated that he/she is free of infectious tuberculosis (TB) as evidenced by receipt of a document supplied by the medical facility.
- D) Has completed the training described in section 3709 as evidenced by receipt of a training completion certificate.
- E) Has agreed to be in compliance with state and federal law, with state and local Ombudsman Program policy and procedure, and with Ombudsman rules as evidenced in signing the Volunteer Contract (Exhibit 3000K).
- F) Has demonstrated the capability to carry out the duties of the office as determined by the Regional Ombudsman Program Coordinator upon completion of the field training.

3708.3 The Regional Ombudsman Program Coordinator will advise the Office of the State Long-Term Care Ombudsman that all certification requirements have been met by an applicant. The Coordinator shall submit copies of the documentation defined in section 3708.1 to the Office of the State Long-Term Care Ombudsman.

3708.4 When all certification requirements have been met, the Office of the State Long-Term Care Ombudsman will certify the applicant to act as a representative of the Office.

3708.5 The Office of the State Long-Term Care Ombudsman will issue by mail a certification card with photo identification and expiration date to the Regional Ombudsman Program Coordinator. This card is to be carried when the Ombudsman is acting as a representative of the Office of the State Long-Term Care Ombudsman.

3709 Operational Procedures for Ombudsman Training

3709.1 The Office of the State Long-Term Care Ombudsman will develop and keep current, a uniform core training curriculum based on model standards as established by the National Ombudsman Resource Center and as supported by the Administration on Aging. The Office of the State Long-Term Care Ombudsman and the Regional Ombudsman Program Coordinator shall work together to provide the core training to the applicant. The 16-hour core curriculum shall consist of the following content:

- A) Long-Term Care Ombudsman Program
- B) Functions and Roles of the Ombudsman
- C) Aging Process; Common Illnesses and Conditions
- D) Long-Term Care System
- E) Resident Rights
- F) Communication
- G) Complaint Process
- H) Volunteerism – applies only to Regional Ombudsman Program Coordinators
- I) Maintaining Representative Records – applies only to Regional Ombudsman Program Coordinators

3709.2 The Regional Ombudsman Program Coordinator will also provide 4 hours of field training to the applicant.

3709.3 Regional Ombudsman Program Coordinators will keep a record of core training participation for each individual applicant. This record is to be placed in the ombudsman's personnel file, and will be evaluated during the monitoring process.

3709.4 Regional Ombudsman Program Coordinators will receive the training identified in 3709.1 and 3709.2 from the Office of the State Long-Term Care Ombudsman.

3710 Operational Principles for Ombudsman Re-certification

3710.1 In order to maintain certification, representatives of the Office of the State Long-Term Care Ombudsman shall:

- A) Remain free of conflict of interest and the Conflict of Interest Screen shall be reviewed every three years or earlier if a change of status occurs.
 - B) Complete annual Tuberculin (TB) screening as described in section 3711.
 - C) Complete a refresher training session every 3 years.
 - D) Complete 8 hours of annual in-service each year.
 - E) Remain in compliance with State law, Federal law and State and local policy and procedure, and Ombudsman Program rules.
 - F) Continue to demonstrate the ability to carry out the duties of the office.
- 3710.2 Regional Ombudsman Program Coordinators and the Office of the State Long-Term Care Ombudsman shall work together to provide opportunities to meet the required 8 hours of annual in-service training.
- A) Regional Ombudsman Program Coordinators shall complete an additional 4 hours of in-service training.
- 3710.3 The Regional Ombudsman Program Coordinators shall advise the Office of the State Long-Term Care Ombudsman that all re-certification requirements have been met by the representative. The Coordinator shall submit copies of the documentation defined in section 3710 to the Office of the State Long-Term Ombudsman.

3711

Operational Procedures for Ombudsman De-certification

- 3711.1 The Regional Ombudsman Program Coordinator and/or the sponsoring agency may recommend de-certification of an Ombudsman Representative to the Office of the State Long-Term Care Ombudsman as described in 3711.3. De-certification of an Ombudsman Representative may also occur voluntarily, should the representative request to resign from the program.
- 3711.2 No representative of the Office of the State Long-Term Care Ombudsman shall be de-certified without cause. The following are examples of actions that may result in de-certification:
- D) Failure of the individual to meet and/or maintain the criteria for certification.
 - E) Deliberate failure of the individual to disclose any conflict of interest or the existence of an un-remedied conflict of interest.
 - F) Violation of confidentiality requirements.
 - G) Failure to provide adequate and appropriate services to long-term care residents.
 - H) Falsification of records.
 - I) Failure to act in accordance with applicable federal and state laws, rules, regulations, and policies.

- 3711.3 The Regional Ombudsman Program Coordinator will submit a written recommendation with documentation to the Office of the State Long-Term Care Ombudsman.
- 3711.4 When cause is provided, the Office of the State Long-Term Care Ombudsman will review the recommendation and documentation and de-certify as appropriate. The Office of the State Long-Term Care Ombudsman will consult with the relevant Regional Ombudsman Program Coordinator and/or the sponsoring agency to consider remedial actions that may prevent de-certification.
- 3711.5 If an attempt at remedial action is unsuccessful and cause still exists, the Office of the State Long-Term Care Ombudsman shall provide written notice of the intent to de-certify to the representative of the Office of the State Long-Term Care Ombudsman with a copy to the Regional Ombudsman Program Coordinator and/or sponsoring agency. The written notice shall inform the de-certified representative that cause has been established and set forth the effective date of the de-certification.
- 3711.6 If the de-certification of a representative of the Office of the State Long-Term Care Ombudsman results in the absence of ombudsman services in a planning and service area, the Office of the State Long-Term Care Ombudsman and Regional Ombudsman Program Coordinator and/or the sponsoring agency shall arrange for the provision of ombudsman services until the decertified representative is replaced.
- 3711.7 The Regional Ombudsman Program Coordinator and/or sponsoring agency must ensure that a de-certified representative abides by the following:
- A) Surrenders the Ombudsman Certification card immediately to the Regional Ombudsman Program Coordinator and/or sponsoring agency. The Coordinator and/or sponsoring agency shall return the surrendered card to the Office of the State Long-Term Care Ombudsman.
 - B) Ceases to identify himself/herself as a representative of the Office of the State Long-Term Care Ombudsman.
 - C) Maintains confidentiality regarding events witnessed and/or experienced while performing duties as a representative of the Office of the State Long-Term Care Ombudsman.

3712 Operational Procedures for the Long-Term Care Program Reporting Requirements

- 3712.1 The Area Agency on Aging shall collect data and maintain records relating to the Long-Term Care Ombudsman Program as defined in the Aging and Adult Administration Policy Chapter 1600.

EXHIBITS:

- 3000G - Authorization for Release of Confidential Information**
- 3000H - Case Notes**
- 3000I - Volunteer Registration**
- 3000J - Confidential References**
- 3000K - Conflict of Interest Screen**
- 3000L - Volunteer Contract**